REMARKS

The Final Office Action mailed June 9, 2009, has been received and reviewed. Claims 1-30 are pending in the subject application. Claim 3 stands rejected under 35 U.S.C. § 112. Claims 1-30 stand rejected under 35 U.S.C. § 103(a). In response, claims 1, 3, 12, 15, and 21 have been amended herein. Claims 22 and 23 have been canceled herein. Support for the amendments may be found in the Specification, as filed, for instance, at p. 11, ll.22 through p. 12, ll. 4. It is respectfully submitted that no new matter has been added to the present application. Reconsideration of the above-identified application in view of the above amendments and the following remarks is respectfully requested.

Objections

Claim 15 was objected to due to an inadvertent typographical error. Claim 15 has been amended hereinabove to correct the informality. Applicant respectfully submits that the amendment overcomes the objection to claim 15, as such, Applicant respectfully requests withdrawal of the objection to claim 15.

Rejections based on 35 U.S.C. § 112

Claims 3 stands rejected under 35 U.S.C. § 112 as reciting the limitation "the placement fee" in line 1 of claim 3. The Office asserts that insufficient antecedent basis exists for this limitation in the claim. As such, Applicant respectfully submits that the amendment to claim 3 cures the lack of antecedent basis. Therefore, Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. § 112 to claim 3.

Rejections based on 35 U.S.C. § 103

Applicable Authority

Title 35 U.S.C. § 103(a) declares, a patent shall not issue when "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." The Supreme Court in Graham v. John Deere counseled that an obviousness determination is made by identifying: the scope and content of the prior art; the level of ordinary skill in the prior art; the differences between the claimed invention and prior art references; and secondary considerations.[1] To support a finding of obviousness, the initial burden is on the Office to apply the framework outlined in Graham and to provide some reason, suggestion, or motivation, found either in the prior art references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the prior art reference or to combine prior art reference teachings to produce the claimed invention.[2] Recently, the Supreme Court elaborated, at pages 13-14 of the *KSR* opinion, that "it will be necessary for [the Office] to look at interrelated teachings of multiple [prior art references]; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by [one of] ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the [patent application]."[3]

Claims 1-8 and 12-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kamangar et al. (U.S. Publication No. 2003/0046161, hereinafter the "Kamangar reference") in view of Asayama (U.S. Publication No. 2003/0220837, hereinafter the "Asayama

[1] *Graham v. John Deere Co.*, 383 U.S. 1 (1966).
[2] *See, Application of Bergel,* 292 F. 2d 955, 956-957 (1961).
[3] *KSR v. Teleflex*, No. 04-1350, 127 S.Ct. 1727 (2007).

reference") and further in view of Lipsky et al. (U.S. Patent No. 7,031,932, hereinafter the "Lipsky reference").

Independent claim 21 is directed to computer-accessible medium having instructions, that when executed by a computing system having a processor and memory, cause the computing system to perform a method for making optimal use of paid placement space on a search results user interface. The method includes "recording a number of times a user navigates from a paid listing placed in a search results user interface to a destination Web site associated with the listing." The method also includes "capturing a revenue amount of purchases generated at the destination Web site as a result of the user navigation." The method also includes "*calculating a conversion rate* associated with the paid listing that indicates an average revenue amount of purchases per user navigation from the paid listing in the search result user interface to the destination Web site." The method also recites "*measuring a performance*, wherein the performance is a comparison between the number of times the user navigates to the destination Web site and the number of times the paid listing is placed in the search results user interface." The method additionally recites "*receiving a revenue sharing percentage* associated with the paid listing, wherein the revenue sharing percentage is a percentage of the revenue generated at the destination Web site as a result of user navigation that is used, in part, to place the paid listing." Further, the method includes "***calculating a paid yield***, wherein ***the paid yield is calculated by multiplying the performance by the conversion rate that is also multiplied by the revenue sharing percentage.***" The method also includes placing the paid listing on the search results user interface in exchange for at least a share of the paid yield, wherein the placement in the search results user interface is determined, in part, by the calculated paid yield.

Contrary to claim 21, the Kamangar reference is directed to ordering of advertisements requested by an ad consumer that is based on scores generated for the ads.[4] The Kamangar reference continues to discuss the ordering of an ad may be done based on "both accepted ad price information and ad performance information."[5] Paragraphs [0013] and [0014] of the Kamangar reference continue to provide a number of exemplary ad price information and performance information that are used to calculate the score. However, it is respectfully submitted that at no point does the Kamangar reference teach or suggest "*calculating a paid yield*, wherein the paid yield is calculated by *multiplying the performance by the conversion rate that is also multiplied by the revenue sharing percentage*" as required by claim 21. Additionally, it is respectfully submitted that at no point does the Kamangar reference teach or suggest "*receiving a revenue sharing percentage* associated with the paid listing," wherein the revenue sharing percentage is used to calculate the paid yield as also required by claim 21. The Office implicitly concedes the same by stating that the Kamangar reference does not explicitly disclose similar features.[6]

As a result of the Office conceding that the Kamangar reference fails to teach at least those features, the Office relies on the Asayama reference to cure these deficiencies.[7] However, contrary to claim 21, the Asayama reference is merely directed to maximizing referral website revenue generated from web affiliate programs.[8] In particular, A dispatcher of the Asayama reference selects advertisements for display based on the (1) revenue generated, (2) conversion ratios, and (3) user purchase histories.[9] However, it is respectfully submitted that at

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[4] *See Kamangar reference*, Abstract.
[5] *See Id.,* ¶ [0012].
[6] *See Final Office Action dated 06/09/2009*, p. 18; *see also, Id.,* p. 20 (rejection of claim 23).
[7] *Id.*
[8] *See Asayama reference*, ¶ [0002].
[9] *See Id.,* ¶ [0005].

no point does the Asayama reference teach or suggest "*calculating a paid yield*, wherein the paid yield is calculated by *multiplying the performance by the conversion rate that is also multiplied by the revenue sharing percentage"* as required by claim 21. Additionally, it is respectfully submitted that at no point does the Asayama reference teach or suggest "*receiving a revenue sharing percentage* associated with the paid listing," wherein the revenue sharing percentage is used to calculate the paid yield as also required by claim 21.

The Office asserts that the Asayama reference, at paragraph [0018], teaches "*receiving a revenue sharing percentage* associated with the paid listing," as required by claim 21.[10] However, it is respectfully submitted that at no point does the Asayama reference teach or suggest "*receiving a revenue sharing percentage* associated with the paid listing," where the revenue sharing percentage is used to calculate *a paid yield,* wherein the placement in the search results user interface is determined, in part, by the calculated paid yield, as required by claim 21. Instead, at the most, the Asayama reference merely discusses a commission based on a percentage of the revenue generated may be earned by a referring website.[11] That is, a referring website may be paid a percentage of revenue as a commission for displaying an advertisement. However, at no point does the commission received by the referring website in the Asayama reference used to calculate a paid yield, let alone have "the placement in the search results user interface [be] determined, in part, by the calculated paid yield," as required by claim 21.

Instead, the Asayama reference, at the most, discusses factors for selecting an affiliate as including an "average revenue generated per click through…"[12] The average revenue generated per click through, as provided by the Asayama reference, in no way teaches

[10] *See Final Office Action dated 06/09/2009*, p. 19.
[11] *See Asayama reference*, ¶ [0018].
[12] *Id.*, ¶[0029].

"*receiving a* revenue sharing *percentage* associated with the paid listing, wherein the revenue sharing percentage *is a percentage* of the revenue generated at the destination Web site as a result of user navigation that is used, in part, to place the paid listing," as required by claim 21. The revenue generated per click by the Asayama reference is not a *percentage* of revenue generated at the destination, as recited in claim 21.

Further, it is respectfully submitted that the Asayama reference fails to teach or suggest "*calculating a paid yield*, wherein the paid yield is calculated by *multiplying the performance by the conversion rate that is also multiplied by the revenue sharing percentage"* as required by claim 21. The Office asserts that the Asayama reference, at paragraphs [0028] and [0029], teaches a similar feature.[13] However, the Asayama reference, as cited by the Office, at the most provides a generic equation that includes the **summation** ($\sum$) of a number (m) of weighted (W) relative factor scores (C).[14] Clearly, the summation of a number of weighted factor scores fail to teach in the same detail a paid yield that is "calculated by ***multiplying*** *the*[1] *performance by the* [2] *conversion rate that is also* ***multiplied*** *by the* [3] *revenue sharing percentage,"* as required by claim 21. Further yet, the Asayama reference fails to teach or suggest performing any operation to calculate a paid yield that is based, in part, on a *revenue sharing percentage* as defined in the claim.

Further yet, it is respectfully submitted that at no point does the Asayama reference teach or suggest "placing the paid listing on the search results user interface *in exchange for at least a share of the paid yield*," as required by claim 21. Instead, the Asayama reference determines an affiliate based on a linear scoring technique for each affiliate that is described a "$\text{Score}_{\text{affiliate}}$" which is the summation of weighted relative factors scores as

[13] *See Final Office Action dated 06/09/2009*, p. 20 (claim 23 rejection).

previously discussed.[15] At no point does the Asayama reference teach or suggest placing the paid listing on the search results user interface *in exchange for at least a share of the* "$Score_{affiliate}$".

Accordingly, it is respectfully submitted that the Kamangar reference as modified by the Asayama and the Lipsky references does not teach or suggest all of the features of independent claim 21. Thus, Applicant respectfully submits that the Kamangar, Asa, and Lipsky references, either alone or in combination, fail to teach or suggest all of the features of independent claim 21. Accordingly, Applicant respectfully requests withdrawal of the rejection of claim 21 under 35 U.S.C. § 103(a). Claim 21 is believed to be in condition for allowance and such favorable action is respectfully requested.

Claims 24-30 depend directly or indirectly from independent claim 21. As such, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejections of these claims as well.

Claim 1

Independent claim 1 recites a method for optimizing the use of paid placement space in a search results Web page. The method includes "monitoring a performance of a paid listing placed for a fee in a search results Web page." The method also includes "receiving conversion data associated with the paid listing, the conversion data representing sales revenue resulting from a user referral to a destination Web site associated with the paid listing." The method also includes "calculating a conversion rate, wherein the conversion rate equals the total conversion data over a time period divided by a total number of user referrals over the time period." The method also includes "*receiving a revenue sharing percentage associated with the*

[14] *Se Asayama reference*, ¶¶ [0027]-[0029].

paid listing, the revenue sharing percentage is a percentage of sales revenues from a user referral to the destination Web site that is used, in part, to determine the fee." The method also includes "*determining a paid yield* associated with the paid listing *based on* the performance monitored, the conversion rate calculated, and the *revenue sharing percentage* received, wherein the paid yield represents advertising revenue resulting from all user referrals to the destination Web site over the period of time." The method also includes "placing the paid listing in the search results Web page based on the paid yield."

As previously discussed with respect to independent claim 21, it is respectfully submitted that the Kamangar, Asayama, and Lipsky references fail to teach or suggest all of the features recited. For example, independent claim 1 recites in part, "*receiving a revenue sharing percentage associated with the paid listing, the revenue sharing percentage is a percentage of sales revenues from a user referral to the destination Web site that is used, in part, to determine the fee*." The Office has asserted the Asayama reference teaches the same at paragraph [0018].[16] However, as previously discussed with respect to claim 21 and maintained here, the Asayama reference fails to disclose a revenue sharing percentage.

Instead, the Asayama reference, at the most, discusses factors for selecting an affiliate as including an "average revenue generated per click through…"[17] The average revenue generated per click through, as provided by the Asayama reference, in no way teaches "*receiving a revenue sharing percentage associated with the paid listing, the revenue sharing percentage is a percentage of sales revenues from a user referral to the destination Web site that is used, in part, to determine the fee*," as required by claim 1. The revenue generated per click by the

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[15] *See Asayama reference*, ¶¶ [0027]-[0029].
[16] *See Final Office Action dated 06/09/2009*, p. 5.
[17] *Id.*, ¶[0029].

Asayama reference is not a percentage of revenue generated at the destination and therefore does not teach a revenue sharing percentage. Let alone a revenue sharing percentage used to determine "*a paid yield* associated with the paid listing," as required by claim 1.

Additionally, it is respectfully submitted that the Kamanager, Asayama, and the Lipsky references fail to teach or suggest "*determining a paid yield* associated with the paid listing *based on* the performance monitored, the conversion rate calculated, and the *revenue sharing percentage* received, wherein the paid yield represents advertising revenue resulting from all user referrals to the destination Web site over the period of time," as required by independent claim 1. Unlike previously discussed claim 21 where the Office asserted that the Asayama reference teaches a similar feature, the Office relied upon the Lipsky reference to teach a similar feature of claim 1.[18]

The Lipsky reference is generally directed to adjusting the execution of an advertising campaign.[19] In particular, the Office relies upon the Lipsky reference in the assertion that "*determining a paid yield* associated with the paid listing *based on* the performance monitored, the conversion rate calculated, and the *revenue sharing percentage* received, wherein the paid yield represents advertising revenue resulting from all user referrals to the destination Web site over the period of time," is allegedly taught at col. 2, ll. 48-61 of the Lipsky reference.[20] However, the relied upon portion of the Lipsky reference is directed to a score of advertisements presented over a period of time.[21] The performance scores of the Lipsky reference may be based on a number of factors such as "click-throughs, conversions, and sales

[18] *See Final Office Action dated 06/09/2009*, p. 5.
[19] *See Lipsky reference*, Abstract.
[20] *See Final Office Action dated 06/09/2009*, p. 7.
[21] *See Lipsky reference*, col. 2, ll. 48-61 .

produced by these advertising alternative, as well as their costs."[22] Similar to the previous discussion surrounding the Asayama reference, the Lipsky reference fails to teach or suggest a revenue sharing percentage. Therefore, it is respectfully submitted that the Lipsky reference fails to teach or suggest "*determining a paid yield* associated with the paid listing *based on* the performance monitored, the conversion rate calculated, and the *revenue sharing percentage* received, wherein the paid yield represents advertising revenue resulting from all user referrals to the destination Web site over the period of time," as required by independent claim 1.

Accordingly, it is respectfully submitted that the Kamangar reference as modified by the Asayama and the Lipsky references does not teach or suggest all of the features of independent claim 1. Thus, Applicant respectfully submits that the Kamangar, Asayama, and Lipsky references, either alone or in combination, fail to teach or suggest all of the features of independent claim 1. Accordingly, Applicant respectfully requests withdrawal of the rejection of claim 1 under 35 U.S.C. § 103(a). Claim 1 is believed to be in condition for allowance and such favorable action is respectfully requested.

Claims 1-9 depend directly or indirectly from independent claim 1. As such, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejections of these claims as well.

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Kamangar reference in view of the Lipsky reference. Claims 9-11 depend, indirectly from independent claim 1 previously discussed. As the Office asserted the same references as independent claim 1, it is respectfully submitted that claims 9-11 are in a condition of allowance

[22] *Id.*

for at least those reasons previously discussed with respect to claim 1. As such, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejections of these claims as well.

Claim 12

Independent claim 12 recites features similar to those discussed with respect to claims 1 and 21. For example, independent claim 12 recites, in part, "a revenue sharing percentage repository containing *a revenue sharing percentage associated with the paid listing*, the revenue sharing percentage indicates a percentage of conversion data that is shared with an advertiser displaying the paid listing." Additionally, claim 12 recites, in part, "a processor to *calculate a paid yield* associated with the paid listing *based on* the performance data from the performance data repository, the conversion data from the conversion data registry, and *the revenue sharing percentage from the revenue sharing repository*, the paid yield indicates how much money was generated when users visited the destination Web site over a period of time, and the paid yield is used to place the paid listing on the search results Web page in exchange for a portion of the paid yield, *wherein the portion of the paid yield is based, in part, on the revenue sharing percentage.*"

For at least those reasons previously discussed, it is respectfully submitted that the Kamangar, Asayama, and Lipsky references, either alone or in combination, fail to teach or suggest all of the features recited in claim 12. Accordingly, Applicant respectfully requests withdrawal of the rejection of claim 1 under 35 U.S.C. § 103(a). Claim 12 is believed to be in condition for allowance and such favorable action is respectfully requested.

Claims 13-20 depend directly or indirectly from independent claim 12. As such, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejections of these claims as well.

CONCLUSION

For at least the reasons stated above, upon entry of the proposed amendments, it is believed that claims 1-21 and 24-30 will be in condition for allowance. As such, Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned – 816-474-6550 or cwfisher@shb.com (such communication via email is herein expressly granted) – to resolve the same.

It is believed that no additional fee is due, however, the Commissioner is hereby authorized to charge any amount required to Deposit Account No. 19-2112, referencing attorney docket number MFCP.140316.

Respectfully submitted,

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